



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Sgt. Douglas J. Wortham—Waiver Request

File: B-271190

Date: July 17, 1996

DIGEST

A member on a permanent change of station move erroneously received travel advances for per diem. Because the member was misinformed concerning his entitlement to per diem and spent the erroneous payments in reliance on the misinformation, waiver under 32 U.S.C. § 716 is appropriate, but only for amounts spent on goods and services for which per diem may properly be spent.

DECISION

This decision is in response to a request from Sergeant (Sgt.) Douglas J. Wortham, a member of the United States Army National Guard, for reconsideration of our Claims Group's partial denial of his request for waiver of his debt under 32 U.S.C. § 716. Sgt. Wortham was erroneously given travel advances from March 1995, through May 1995, incident to a permanent change of station (PCS) move. For the reasons discussed below, we affirm our Claims Group's Settlement, but we increase the amount waived from \$1,801.82 to \$1,965.99.

On February 24, 1995, Sgt. Wortham received orders assigning him to Active Duty Special Work during the period March 6, 1995, through August 31, 1995. Sgt. Wortham was incorrectly informed by finance personnel that he was entitled to per diem, and from March 1995 through May 1995, he received travel advances for per diem totaling \$9,000, all of which he expended. On May 15, 1995, Sgt. Wortham was notified that he had not been entitled to per diem because he was on a PCS move and that the travel advances had been made in error.

Our Claims Group waived \$1,801.82, but denied waiver of the remaining amount, \$7,198.18, on the basis that there was no indication that this amount had been spent on items that would have been authorized had Sgt. Wortham actually been entitled to receive per diem.

We agree that a partial waiver is appropriate, but we increase the amount waived by \$164.17.

Pursuant to 32 U.S.C. § 716, the Comptroller General may waive a claim of the United States arising out of an erroneous payment of pay or allowances, including travel allowances, the collection of which would be against equity and good conscience and not in the best interests of the United States. The Comptroller General, however, may not waive a claim if in his opinion there exists any indication of fault, fraud, misrepresentation or lack of good faith on the part of the member.

Travel advances are not meant to represent a final payment to which a traveler is entitled. Travelers who receive advance travel funds are on notice that they are entitled to be reimbursed only for legally authorized expenditures. If, during travel, a member does not spend the amount advanced to him on authorized expenses, he must return the balance. Thus, in adjudicating a waiver involving a travel advance, the Comptroller General has held that expenses incurred as a result of an erroneous travel advance fall under the statutory waiver authority to the extent the travel advance was made to cover the expenses erroneously authorized and the member actually spent the advance in reliance on the erroneous authorization. See John P. Spanik, B-247872, Sept. 25, 1992; and Patricia J. Youmans, B-251865, Apr. 28, 1994.

In the present case, Sgt. Wortham relied on erroneous information in accepting the advance and there are no indications of fault, fraud, misrepresentation or lack of good faith on his part. He submitted an itemized list of expenses to account for the travel advances he received. The Claims Group properly approved for waiver the \$1,801.82 which Sgt. Wortham spent in Virginia for rent, natural gas, electricity, and plane fare. It is our view that \$60.46 spent for telephone service (\$200.33 in phone bills minus installation fee and long-distance charges) may properly be waived, as well as \$103.71 which appears to be for shipment of belongings to Sgt. Wortham. See Tita D. Corpuz and John R. Fears, B-256576, Jan. 17, 1996.

There is no basis, however, for waiving that portion of his debt, amounting to \$7,034.01, that was spent on items such as family expenses in Minnesota and

automobile repairs that would not have been authorized had Sgt. Wortham actually been entitled to per diem.¹

The Claims Group's Settlement is affirmed, but the amount waived is increased to \$1,965.99.

/s/Seymour Efros
for Robert P. Murphy
General Counsel

¹We note that Sergeant Wortham did not include in his list of expenses any amounts for food or gasoline. If he can substantiate any amounts he spent for those items or for incidental expenses allowable under the Joint Federal Travel Regulations, he should submit them to the service. Any amounts accepted as appropriate expenses may be deducted from Sergeant Wortham's debt.